

U.S. Department of  
Homeland Security

United States  
Coast Guard



Office of the Administrative Law Judge  
United States Coast Guard

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14 December 2018

MuckRock News  
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Somerville, MA 02144  
54678-88059437@requests.muckrock.com

RE: DHS FOIA Appeal number 2018-HQAP-00269; FOIA Request Number: 2018-HQFO-01014

Dear Ms. Best:

This letter concerns your appeal of the Department of Homeland Security's (DHS), Privacy Office's (PRIV or Agency) response addressing your Freedom of Information Act (FOIA) request 2018-HQFO-01014. Specifically, your request sought emails containing the terms "MuckRock, Muck Rock, or muckrock.com," and excluded all materials emails sent to or from a MuckRock.com email address. PRIV responded to your request on May 29, 2018, informing you it considered your request too broad in scope to conduct a search. As indicated in your June 11, 2018 correspondence, you seek review of PRIV adverse determination.

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Administrative Law Judge renders decisions on FOIA appeals on behalf of the Department of Homeland Security.

After a thorough review of your appeal and all applicable documents, I am **REMANDING** this matter to PRIV for further consideration. The record indicates the FOIA officer did not consider your request within the confines of applicable law and regulations.

An agency is required to conduct a "reasonable search" pursuant to 5 U.S.C. § 552(a)(3) and each different agency makes the determination of where and how to search for responsive records. *Lechliter v. Rumsfeld*, 182 F. App'x 113, 115 (3d Cir. 2006) (holding that the agency fulfilled their duty to conduct a reasonable search when it searched two offices that it determined to be the only ones likely to possess responsive documents); *Brehm v. DOD*, 593 F. Supp. 2d 49, 50 (D.D.C. 2009) (finding that a search was reasonable where the agency searched two systems likely to have responsive records); *Knight v. NASA*, No. 04-2054, 2006 WL 3780901 (E.D. Cal. Dec. 21, 2006) (finding that there is no requirement that an agency search all possible sources in response to a FOIA request when it believes all responsive documents are likely to be located in one place). Furthermore, the agency is in the best position to determine how to best search for records in its systems.

However, the agency must conduct a search responsive to the specific request. *See Sack v. Dep't of Justice*, - - - F.Supp.2d - - - 2014 WL 4100407 (D.D.C. 2014) (requiring the Department of Justice to conduct further searches or produce affidavits more responsive to the search terms provided to the agency). *See also Wiesner v. FBI*, 577 F.Supp.2d 450, (D.D.C.,2008) ("the Court harbours 'substantial doubt' as to the adequacy of the FBI's search based on its failure to explain adequately why it did not search its files using the additional search terms supplied by the requester"). Furthermore, the agency must "construe a FOIA request liberally." *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995). As the D. C. Circuit has made clear, even if a request "is not a model of clarity" an agency should carefully consider the nature of each request and give a reasonable interpretation to its terms and overall content. *LaCedra v. Executive Office for U.S. Attorneys*, 317 F.3d 345 (D.C. Cir. 2003).

Pursuant to relevant authority, the undersigned finds the Agency's conclusion that your request is too broad in scope, erroneous. Your May 23, 2018 request provided DHS with a reasonable description sufficient to conduct a search.

Take note, because you did not specify which DHS component might have the requested documents, DHS may make a determination as to which component "it believes most likely to have the records you want." See 6 C.F.R. § 5.3.

Finally, be advised that **nothing in this letter** should be construed as evidence that records responsive to your request exist at all. Moreover, this letter does not prevent DHS, or any of its components, from asserting an applicable privilege pursuant to law and regulation.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

**The Agency shall have 60 days** to provide you and my office with an updated response regarding your request. If after 60 days you do not receive an updated response, I, or another attorney will issue a letter providing final agency action in this matter, so that you

may enter federal court to pursue further relief, if you so choose.

Sincerely,

A handwritten signature in black ink that reads "Tommy Cantrell". The signature is written in a cursive, flowing style.

Tommy Cantrell  
Attorney Advisor  
United States Coast Guard  
Department of Homeland Security

Sent: Via first class mail to the above address.